

EXHIBIT B

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

**BILLY EVANS AND HEATHER EVANS,
Individually and as Natural Guardians of O.E.
O.E., an infant,**

Plaintiffs,

- vs -

SOUTHTOWNS CATHOLIC SCHOOL,

**J.L., an infant BY MICHAEL LI VECCHI AND
CLARA LI VECCHI, HIS PARENTS AND NATURAL
GUARDIANS,**

Defendants.

**VERIFIED ANSWER TO
AMENDED VERIFIED
COMPLAINT
WITH CROSS-CLAIM**

Index No. 2019/801322

Defendant Southtowns Catholic School, by its attorneys Bond, Schoeneck & King, PLLC, for its answer to the amended verified complaint (the "amended complaint") of Plaintiffs Billy Evans and Heather Evans, Individually and as Guardians of O.E., an infant, and O.E., an infant ("Plaintiffs"):

1. Denies the allegations contained in paragraphs "7", "9", and "10" of the amended complaint.
2. Denies on information and belief the allegations contained in paragraph "8" of the amended complaint.
3. As to paragraph "2" of the amended complaint, states that it is a consolidated prekindergarten through grade 8 school that is located and operates in the Town of Hamburg, County of Erie, State of New York and otherwise denies the allegations of paragraph "2" of the amended complaint

4. As to paragraphs "3" and "5" of the amended complaint, admits on information and belief that the named infant Defendant, J.L., was a student at Southtowns Catholic School during the period of time placed at issue in the amended complaint, further admits on information and belief that the named infant Defendant, J.L., is currently a student at Southtowns Catholic School, and otherwise denies paragraphs "3" and "5" of the amended complaint.

5. As to paragraph "4" of the amended complaint, states that the infant Plaintiff, O.E., was enrolled as a prekindergarten student at Southtowns Catholic School from approximately October 1, 2018 until approximately December 20, 2018 and otherwise denies paragraph "4" of the amended complaint.

6. As to paragraph "6" of the amended complaint, denies that any official of Southtowns Catholic School ever so instructed the infant Defendant, J.L., states that the employees of Southtowns Catholic School at all relevant times took reasonable precautions to ensure the safety of students at the school, and otherwise denies paragraph "6" of the amended complaint.

7. Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph "1" of the amended complaint.

8. Denies each and every allegation of the amended complaint not hereinbefore specifically admitted, denied, or otherwise controverted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. The amended complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. If Plaintiffs were damaged as alleged in the amended complaint and are entitled to any recovery thereon, the liability of Defendant Southtowns Catholic School, if any, for such damages is fifty percent or less of the total liability assigned to all persons liable for Plaintiffs' damages.

11. If Plaintiffs sustained non-economic loss by reason of any fault other than own, the liability of Defendant Southtowns Catholic School, if any, to Plaintiffs for such non-economic loss shall not exceed the equitable share of such liability of Defendant Southtowns Catholic School determined in accordance with the relative culpability of each person causing or contributing to the total liability for such non-economic loss.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

12. If Plaintiffs were damaged by reason of the cost or expense, past or future, of medical care, dental care, custodial care or rehabilitation services, loss of earnings or other economic loss as alleged in the complaint, such cost or expense was, or will with reasonable certainty be, replaced or indemnified, in whole or in part, by a collateral source or sources as defined in New York CPLR 4545.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. Defendant Southtowns Catholic School lacked notice, actual or constructive, of any alleged hazardous conditions and thus is not liable for Plaintiffs' alleged injuries.

**AS AND FOR A CROSS-CLAIM
AGAINST THE CO-DEFENDANTS**

14. If the Plaintiffs sustained the injuries and damages in the manner and at the time and place alleged, and in the event it is found that this answering Defendant is liable to the Plaintiffs herein, then upon said allegations of the amended complaint and upon the pleadings and evidence, said damages were sustained by reason of the sole, active and primary carelessness and/or recklessness and/or negligence and/or affirmative acts of omissions or commission on the part of one or more of this answering Defendant's co-Defendants herein, and this answering Defendant is therefore entitled to complete indemnification from any judgment over against each and every such co-Defendant herein, for all or part of any verdict or judgment that Plaintiffs may recover against this answering Defendant, and/or in the event that judgment over is not recovered on the basis of full indemnification, then this answering Defendant demands judgment over and against each and every co-Defendant herein on the basis of an apportionment of responsibility for the alleged occurrence for all or part of any judgment or verdict that Plaintiffs may recover against this answering Defendant, and that all of the provisions of limitation of liability under Article 16 of the CPLR are pleaded and reiterated herein by this cross-claiming Defendant.

WHEREFORE, Defendant Southtowns Catholic School demands judgment:

- a. Dismissing the amended complaint and each cause of action asserted therein;
- b. For a limitation of its liability to the Plaintiffs;
- c. Pursuant to its cross-claim, judgment over and against the co-Defendants herein, whether in the nature of indemnification or contribution, in the event a judgment in favor of the Plaintiffs is awarded against this Defendant;
- d. For its reasonable attorneys' fees;
- e. For the costs and disbursements of this action; and
- f. For such other and further relief as to the Court seems just and proper.

DATED: Buffalo, New York
June 5, 2019

BOND, SCHOENECK & KING, PLLC

By: 

Dennis K. Schaeffer, Esq.

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CORPORATE VERIFICATION

STATE OF NEW YORK)
) SS.:
COUNTY OF ERIE)

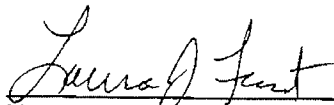
Marc Bandelian, being duly sworn, deposes and says:

I am the Principal of defendant Southtowns Catholic School; I have read the foregoing Answer and know the contents thereof; and the contents are true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

I further say that the reason this verification is made by me and not by defendant Southtowns Catholic School is that said party is a corporate entity in the nature of a consolidated prekindergarten through grade 8 school, and the grounds of my belief as to all matters in this action not stated upon my own knowledge are investigations which I have caused to be made concerning the subject matter of this litigation and information acquired by me in the course of my duties as the Principal of said corporate entity and from the books and papers of said entity.


Marc Bandelian

Sworn to before me this
5 day of June, 2019


Notary Public

1333246

LAURA J. FAUST
Notary Public, State of New York
Certified in Erie County
Reg. No. 01FA6067834
My Commission Expires Dec. 10, 2021